



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR  
MARTIN J. WALSH

July 9, 2018

**TO THE CITY COUNCIL**

Dear Councilors:

I transmit herewith for your approval an ordinance amending City of Boston Code, Ordinances, Chapter XXIV, Boston Jobs and Living Wage Ordinance.

These amendments will ensure that City dollars are not used to undercut the prevailing standards that have been attained by individuals who clean and maintain buildings and individuals who provide security guard services, such prevailing standards exceeding the current requirements of the City's Living Wage ordinance.

These amendments will also implement a transitional employment period for individuals providing such services to the City in the event that a City contract expires or is otherwise terminated. This policy will provide valuable protection for workers and serve the City's interest in maintaining a qualified and experienced contracted workforce that is familiar with the City's facilities and work.

I urge your Honorable Body to act favorably on the proposed amendments without delay.

Sincerely,

Martin J. Walsh  
Mayor of Boston

# CITY OF BOSTON

## IN CITY COUNCIL

### **AN ORDINANCE AMENDING CITY OF BOSTON CODE, ORDINANCES, CHAPTER XXIV, BOSTON JOBS AND LIVING WAGE ORDINANCE.**

#### Section 1.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-1, is hereby amended in the first sentence by striking the words “Boston Jobs and Living Wage Ordinance” and inserting in place thereof the words “Boston Jobs, Living Wage, and Prevailing Wage Ordinance”.

#### Section 2.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-1, is hereby further amended in the second sentence by inserting after the words “poverty level” the words “, and to ensure that City dollars are not used to undercut the prevailing standards that have been attained by building service workers”.

#### Section 3.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-2(c), is hereby amended by inserting after the words “service contract” the words “or covered building service contract”.

#### Section 4.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-2(d), is hereby amended in the first sentence by inserting after the words “covered vendor” the words “, other than a covered building service employee,”.

#### Section 5.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-2(e), is hereby amended in the first sentence by inserting after the words “not-for-profit employer” the words “, other than a covered building service vendor,”.

#### Section 6.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-2(m), is hereby amended in the first sentence by inserting after the words “shall mean any contract” the words “, other than a covered building service contract,”.

### Section 7.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-2(n), is hereby amended by inserting after the words “shall mean a subcontract” the words “, other than a subcontract for building services,”.

### Section 8.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-2(p), is hereby amended by inserting after the words “any covered vendor” the words “, other than a covered building service vendor,”.

### Section 9.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-2, is hereby further amended by inserting after Subsection 24-2(p), the following subsections:

q. *Covered building service contract* shall mean a contract or subcontract to provide building services to the City of Boston.

r. *Covered lease* shall mean any agreement whereby the City of Boston contracts for, leases, or rents commercial office space or commercial office facilities from a non-governmental entity provided the City, whether through a single agreement or multiple agreements, rents no less than fifty one percent (51%) of the total square footage of the buildings to which the lease applies.

s. *Covered City-owned property* shall mean buildings owned by the City of Boston.

t. *Covered building service employee* shall mean: (1) any person employed directly or indirectly to perform building service work in the performance of a covered building service contract; (2) any person employed directly or indirectly to perform building service work on covered City-owned property; and, (3) any person employed directly or indirectly to perform building service work on premises that are the subject of a covered lease.

u. *Building services* or *building service work* shall mean work performed in connection with the cleaning and maintenance of buildings and security guard services.

v. *Covered building service vendor* shall mean an employer providing building services pursuant to a covered building service contract.

w. *Standard compensation* shall mean the hourly rate of pay, benefits, and paid leave that shall be provided to a covered building service employee pursuant to the formula set forth in Subsection 24-7.6 of this Chapter.

x. *Covered lessor* shall mean any non-governmental person or entity that enters into a covered lease with the City of Boston.

y. *Covered lessee* shall mean any non-governmental person or entity that contracts for, leases, or rents space in covered City-owned property from the City of Boston.

Section 10.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-3.1, is hereby amended by striking the words “All of the provisions of this Chapter”, and inserting in place thereof the words “Where this Chapter applies to covered vendors, the provisions”.

Section 11.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-3.4(a), is hereby amended by inserting after words “service contract or subcontract”, the words “, a covered building service contract, a covered lease, or a lease of covered City-owned property”.

Section 12.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-3.4(a)(1), is hereby amended by inserting after words “service contract or subcontract”, the words “, covered building service contract, covered lease, or lease of covered City-owned property”.

Section 13.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-5, is hereby amended by inserting after the words “service contracts”, the words “or covered building service contracts”.

Section 14.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-5, is hereby further amended by inserting after the words “service contract”, in both instances in which they appear, the words “or covered building service contract”.

Section 15.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-5, is hereby further amended by inserting after the second and final sentence, the following subsections:

a) Notification for Covered Building Service Contracts:

All covered building service contracts and all solicitations for building services issued by the City of Boston shall specifically state that all requirements of this Chapter applicable to covered building service contracts, including enforcement mechanisms, are applicable to the contract and incorporated by reference, state that covered building service employees shall not be paid less than standard compensation for the relevant classification, and indicate: (i) the number of hours of work required for the duration of the contract; (ii) the standard compensation for the relevant classification or classifications that is applicable to the covered building service employees; (iii) the process for annual price adjustments to accommodate increases in the required compensation;

and (iv) a statement that the violation of the standard compensation requirement shall constitute a breach of contract. All solicitations for building services issued by the City of Boston shall further require prospective covered building contractors to submit pricing on a standard worksheet that is furnished by the City of Boston that breaks down the proposed hourly pricing into itemized components.

b) Notification for Covered City-Owned Property:

Before entering into a lease as the lessor of covered City-owned property, the City of Boston shall specifically state that all requirements of this Chapter applicable to leases of covered City-owned property, including enforcement mechanisms, are applicable to the lease and incorporated by reference, and require, as a condition of the lease, a contractual commitment from every covered lessee that, if the lessee enters into a contract with a vendor to provide building services at the covered City-owned property: (i) each covered building service employee, whether or not he or she is directly employed by the covered lessee, shall be provided with standard compensation in accordance with the provisions of this Chapter; (ii) any contract or subcontract entered into by the covered lessee for the provision of building service work, any contract or subcontract entered into by the covered lessee for property management, and any lease with any tenant shall contain the following provision: "The wages paid on an hourly basis to any person providing building services, as defined in City of Boston Code, Ordinances, Chapter XXIV, and the amount of payment or contribution paid or payable on behalf of each such person to cover benefits and the paid leave to be provided to each such person, shall be at a rate greater or equal to the 'standard compensation' as defined in City of Boston Code, Ordinances, Chapter XXIV. A violation of this requirement shall constitute a breach of contract."; and (iii) the covered lessee shall produce for inspection and copying certified payroll records pertaining to any and all covered building service employees for the prior three (3) year period upon request.

c) Notification for Covered Leases:

Before entering into a covered lease, or extension, renewal, amendment, or modification thereof, the City of Boston shall specifically state that all requirements of this Chapter applicable to covered leases, including enforcement mechanisms, are applicable to the lease and incorporated by reference into the lease, and require, as a condition of the lease, a certification, executed under penalty of perjury, that all covered building service employees employed in or around the building to which the lease pertains will be provided with standard compensation for the term of the lease. Such certification shall be certified by the chief executive or chief financial officer of the covered lessor, or the designee of any such person. The certification shall be annexed to a part of any covered lease. The certification shall state that a violation of any provision of the certification shall constitute a violation of the covered lease and of this Chapter. In the certification, the covered lessor shall agree to provide certified payroll reports pertaining to covered building service employees for the prior three (3) year period upon request.

#### Section 16.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-7.1, is hereby amended in the first sentence by inserting after the words “Covered vendors” the words “, covered building service vendors, covered lessors, and covered lessees”.

#### Section 17.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-7.1, is hereby further amended in the first sentence by inserting after the words “covered employee” the words “and covered building service employee”.

#### Section 18.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-7.1, is hereby further amended in the second sentence by inserting after the words “covered vendor” the words “, covered building service vendor, covered lessor, or covered lessee”.

#### Section 19.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-7.1(a), is hereby amended by inserting after the word “amount” the words “and notice of the standard compensation amount”.

#### Section 20.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-7.2, is hereby amended by inserting after Subsection 24-7.2(b), the following subsections:

c. *Payroll Reporting.* On an annual basis, a covered building service vendor shall file with the City a complete certified payroll report showing the covered building service vendor’s payroll records for each covered building service employee. The City shall maintain all certified payroll reports so that they may be used in the event a complaint is made under the provisions of Section 24-10 of this Chapter.

#### Section 21.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-7.4, is hereby amended in the first sentence by inserting after the words “Covered vendors” the words “and covered building service vendors”.

#### Section 22.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-7.4(a), is hereby amended by inserting after the words “service contract”, the words “, covered building service contract.”.

### Section 23.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-7.4(b), is hereby amended by inserting after the words “service contract”, the words “, covered building service contract,”.

### Section 24.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-7, is hereby amended by inserting after Subsection 24-7.4, the following subsections:

#### 24-7.5 Transitional Employment Period.

The City shall give advance notice, to the extent practicable, to a covered building service vendor and any collective bargaining representative of the covered building service vendor’s employees that a covered building service contract will expire or be terminated, and the City shall also provide the name, address, and telephone number of the successor covered building service vendor or contractors where known. The expired or terminated covered building service vendor shall, within fifteen (15) days after receipt of such notice, provide to the successor covered building service vendor the name, address, date of hire, and employment occupation classification of each covered building service employee employed at the site or sites covered by the building service contract at the time of receiving said notice. The expired or terminated covered building service vendor shall also provide this information to the City and to any collective bargaining representative of the vendor’s employees. At the same time, the expired or terminated vendor shall provide each affected employee with notice of his or her right to obtain employment with the successor covered building service vendor.

A successor covered building service vendor or subcontractor where applicable shall retain for a 90-day transitional employment period all covered building service employees who were employed by the expired or terminated covered building service vendor and its subcontractors at the location(s) covered by the expired or terminated contract. This requirement shall not apply in the event the City chooses to employ building service employees directly.

If at any time the successor covered building service vendor determines that fewer employees are required to perform the new service contract than had been performing such services under the expired or terminated contract, the successor covered building service vendor shall retain the covered building service employees by seniority within job classification. Except for such layoffs, during the 90-day transition period, the successor covered building service vendor shall not discharge without cause a covered building service employee pursuant to this section. During the 90-day transition period, the successor covered building service vendor shall maintain a preferential hiring list of those covered building service employees not retained from which the successor vendor or its subcontractors shall hire additional employees. At the end of the 90-day transition employment period, the successor covered building service vendor shall perform a written performance evaluation for each covered building service employee retained pursuant to this Ordinance. If a covered building service employee’s performance during such 90-day period is satisfactory, the successor covered building service vendor or subcontractor

shall offer the covered building service employee continued employment under the terms and conditions established by the successor covered building service vendor or subcontractor or as required by law.

#### 24-7.6 Provision of Standard Compensation to Covered Building Service Employees

a. All covered building service vendors shall provide all covered building service employees with no less than standard compensation. All covered lessors shall ensure that all covered building service employees employed in or around the building to which the relevant lease pertains are provided with no less than standard compensation for the term of the lease. All covered lessees that enter into a contract with a vendor to provide building services at a covered City-owned property shall ensure that all covered building service employees are provided with no less than standard compensation for the term of the lease.

b. The City of Boston shall maintain a list of covered leases, leases of covered City-owned property, and covered building service contracts. The list shall include the addresses of: properties that are the subject of covered leases, City-owned property, and locations covered by covered building service contracts.

#### c. Calculation of Standard Compensation

1. Standard compensation shall include, for the relevant classification: 1) the standard hourly rate of pay, 2) standard paid leave, and 3) standard benefits.

i. The “standard hourly rate of pay” for covered building service employees other than unarmed or armed security guards shall be the greatest of the following:

(1) The Living Wage rate as defined in 24-6.2; or (2) the prescribed rate of wages as determined by the Director of the Department of Labor Standards pursuant to section 27H of the Massachusetts General Laws.

ii. The “standard hourly rate of pay” for unarmed security guards shall be the greatest of the following:

(1) The Living Wage rate as defined in 24-6.2; or (2) the prescribed rate of wages as determined by the Director of the Department of Labor Standards pursuant to section 3 of chapter 195 of the Massachusetts Acts of 2014.

iii. The “standard hourly rate of pay” for armed security guards shall be the greatest of the following:

(1) The rate established by the Federal Department of Labor for the Guard II classification in the Area Wage Determination applicable to work performed within the County of Suffolk under the Federal Service Contract Act (41 U.S.C. 351, et seq.); or (2) the prescribed rate of wages as determined by the Director of Labor Standards pursuant to the State Prevailing Wage Law, section 3, Chapter 195 of the Acts of 2014.



iv. The “standard hourly rate of pay” for covered building service employees other than for unarmed or armed security guards shall be annually adjusted to be no less than the greatest of the following:

- (1) The current Living Wage rate as defined in 24-6.2; or (2) the current prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 27H of chapter 149 of the General Laws of Massachusetts.

v. The “standard hourly rate of pay” for unarmed security guards shall be annually adjusted to be no less than the greatest of the following:

- (1) The current Living Wage rate as defined in 24-6.2; or (2) the current prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 3 of chapter 195 of the Massachusetts Acts of 2014.

vi. The “standard hourly rate of pay” for armed security guards shall be annually adjusted to be no less than the greatest of the following:

- (1) The current rate established by the Federal Department of Labor for the Guard II classification in the Area Wage Determination applicable to work performed within the County of Suffolk under Federal Service Contract Act (41 U.S.C. 351, et seq.); or (2) the current prescribed rate of wages as determined by the Director of Labor Standards pursuant to the State Prevailing Wage Law, Section 3, Chapter 195 of the Acts of 2014.

vii. “Standard paid leave” for covered building service employees other than for unarmed or armed security guards shall be equal to the greatest of the following:

- (1) Annual paid leave required under applicable local, state, or federal law; or (2) the paid leave provided under the prescribed rate of wages as determined by Director of the Department of Labor Standards pursuant to section 27H of chapter 149 of General Laws of Massachusetts.

viii. “Standard paid leave” for unarmed or armed security guards shall be equal to the greatest of the following:

- (1) Annual paid leave required under applicable local, state, or federal law; (2) the paid leave provided under the prescribed rate of wages as determined by the Director of the Department of Labor Standards pursuant to section 3 of chapter 195 of the Acts of the Massachusetts Acts of 2014.

ix. The “standard benefits” for covered building service employees other than for unarmed or armed security guards shall be an hourly supplement furnished by a covered building service employer to a covered building service employee in one of the following ways:

- (1) in the form of health and other benefits (not including paid leave) that cost the covered building service employer the entire required hourly supplemental amount;
- (2) by providing a portion of the required hourly supplement in the form of health and other benefits (not including paid leave) and the balance in cash; or (3) by providing the entire supplement in cash.

The required hourly supplemental rate for covered building service employees other than for unarmed or armed security guards shall be equal to the monetary value of the

health and other benefits (not including paid leave) provided under the prescribed rate of wages as determined by the Director of the Department of Labor Standards pursuant to section 27H of chapter 149 of the Massachusetts General Laws.

x. The “standard benefits” for unarmed security guards shall be an hourly supplement furnished by a covered building service employer to a covered building service employee in one of the following ways:

(1) in the form of health and other benefits (not including paid leave) that cost the covered building service employer the entire required hourly supplemental amount; (2) by providing a portion of the required hourly supplement in the form of health and other benefits (not including paid leave) and the balance in cash; or (3) by providing the entire supplement in cash.

The required hourly supplemental rate for unarmed security guards shall be equal to the monetary value of the health and other benefits (not including paid leave) provided under the prescribed rate of wages as determined by the Director of the Department of Labor Standards pursuant to section 3 of chapter 195 of the Massachusetts Acts of 2014.

xi. The “standard benefits” for armed security guards shall be an hourly supplement furnished by a covered building service employer to a covered building service employee in one of the following ways:

(1) in the form of health and other benefits (not including paid leave) that cost the covered building service employer the entire required hourly supplemental amount; 2) by providing a portion of the required hourly supplement in the form of health and other benefits (not including paid leave) and the balance in cash; or 3) by providing the entire supplement in cash.

The required hourly supplemental rate for armed security guards shall be equal to the greatest of the following:

(1) The monetary value established by the Federal Department of Labor for the Guard II classification in the Area Wage Determination applicable to work performed within the County of Suffolk under Federal Service Contract Act (41 U.S.C. 351, et seq.); or (2) the monetary value of the health and other benefits (not including paid leave) provided under the prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 3 of chapter 195 of the Massachusetts Acts of 2014.

xii. The “standard benefits” for building service workers other than unarmed or armed security guards shall be adjusted annually to be no less than equal to the current monetary value of the health and other benefits (not including paid leave) as determined by the director of the department of labor standards pursuant to section 27H of chapter 149 of the General Laws of Massachusetts.

xiii. The “standard benefits” for unarmed security guards shall be adjusted annually to be no less than equal to the current monetary value of the health and other benefits (not including paid leave) provided under the prescribed rate of wages as determined by the

Director of the Department of Labor Standards pursuant to section 3 of chapter 195 of the Massachusetts Acts of 2014.

xiv. The “standard benefits” for armed security guards shall be adjusted annually to be no less than equal to the value of the greatest of the following: (1) The current monetary value established by the Federal Department of Labor for the Guard II classification in the Area Wage Determination applicable to work performed within the County of Suffolk under Federal Service Contract Act (41 U.S.C. 351, et seq.); or (2) the current monetary value of the health and other benefits (not including paid leave) provided under the prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 3 of chapter 195 of the Massachusetts Acts of 2014.

2. For the purposes of this Chapter, “benefits” shall not include workers compensation or other legally mandated insurance, nor shall it include the value of any benefit for which the covered building service employee is eligible, but for which no payment is actually made by a covered building service employer to the covered building service employee or to any other party on the covered building service employee’s behalf because the covered building service employee either does not actually utilize or does not elect to receive the benefit for any reason.

Section 25.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-10.1(a), is hereby amended by inserting after the words “covered employee”, in both instances in which they appear, the words “or covered building service employee”.

Section 26.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-10.1(a), is hereby amended in the second sentence by inserting after the words “covered employees”, the words “or covered building service employees”.

Section 27.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-10.1(a), is hereby amended in the third sentence by inserting after the words “covered vendor”, the words “, covered building service vendor, covered lessor, or covered lessee”.

Section 28.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-10.1(b), is hereby amended by inserting after the words “covered vendor”, the words “, covered building service vendor, covered lessor, or covered lessee”.

### Section 29.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-10.2, is hereby amended by inserting after the words “covered vendor”, in each of the three instances in which they appear, the words “, covered building service vendor, covered lessor, or covered lessee”.

### Section 30.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-10.2, is hereby further amended, in the first sentence, by inserting after the words “covered employee”, the words “or covered building service employee”.

### Section 31.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-10.4(a), is hereby amended by inserting after the words “covered vendor”, the words “, covered building service vendor, covered lessor, or covered lessee”.

### Section 32.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-10.4(a), is hereby further amended by inserting after the words “covered employees”, the words “or covered building service employees”.

### Section 33.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-10.4(a), is hereby further amended by inserting after the words “Section 24-6, Living Wage Payment to Employees”, the words “or noncompliance with Section 24-7.6, Provision of Standard Compensation to Covered Building Service Employees.”

### Section 34.

City of Boston Code, Ordinances, Chapter XXIV, Section 24-10.4(b), is hereby amended by inserting after the words “covered vendor”, the words “, covered building service vendor, covered lessor, or covered lessee”.

### Section 35.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-11(a), is hereby amended in the first sentence by inserting after the words “otherwise violated the provisions of this Chapter,” the words, “or that any covered building service vendor, covered lessor, or covered lessee has failed to provide standard compensation or has otherwise violated the provisions of this Chapter,”.

Section 36.

City of Boston Code, Ordinances, Chapter XXIV, Subsection 24-11(a)(3), is hereby amended by inserting after the words "affected employee" the words "and in addition, for covered building service employees, the monetary value of benefits and paid leave plus interest owed".

Section 37.

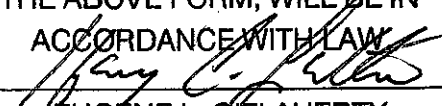
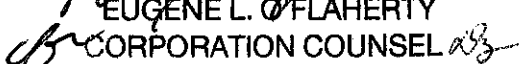
This ordinance shall not apply to any covered building service contracts, covered leases, or leases of covered City-owned property advertised or entered into prior to the effective date hereof.

Section 38.

If any provision of this ordinance is held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

Section 39.

The effective date of this ordinance shall be thirty days after its passage.

I HEREBY CERTIFY THAT  
THE FOREGOING, IF PASSED IN  
THE ABOVE FORM, WILL BE IN  
ACCORDANCE WITH LAW  
BY   
EUGENE L. O'FLAHERTY  
 CORPORATION COUNSEL